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January 24, 2001

VIA HAND DELIVERY

RECEIVED

JAN 24 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

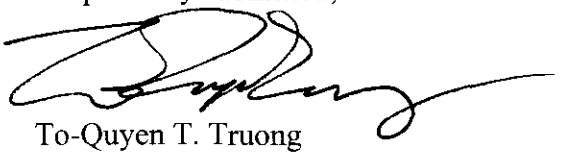
Re: *Written Ex Parte*
GN Docket No. 00-185 – Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities

Dear Ms. Salas:

I am writing to inform you that on Thursday, January 24, 2002, Cox Communications Inc. and its subsidiaries ("Cox") submitted the attached letter to Ms. Catherine Bohigian, legal advisor to Commissioner Kevin Martin. The purpose of the submission was to provide Ms. Bohigian with written documents previously filed by Cox in the above-captioned proceeding.

Pursuant to Section 1.1206(b) of the Commission's rules, an original and one copy of this letter and enclosures are being submitted to the Secretary's office for the above-captioned docket and a copy of this letter is being provided to Ms. Bohigian. Should there be any questions regarding this filing, please contact the undersigned.

Respectfully submitted,



To-Quyen T. Truong

TTT/
Attachment
cc (w/o att.): Catherine Bohigian, Esq.

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COX ENTERPRISES, INC.
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e-mail: alexandra.wilson@cox.com

Alexandra M. Wilson
Vice President of Public Policy

January 24, 2002

Catherine Bohigian
Legal Advisor to Commissioner Kevin Martin
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Catherine:

Thank you for taking the time to meet with us about the Commission's inquiry concerning high-speed Internet access over cable and other broadband facilities (GN Docket No. 00-185). As Commissioner Martin requested, I am enclosing the additional materials that Cox recently has submitted for the record in that proceeding.

Included in the materials are comments that Cox originally submitted in the Commission's Competitive Networks Inquiry and has since provided to the Cable Bureau staff for inclusion in the broadband access proceeding. As you will see from those comments, Cox does not believe that local governments may lawfully impose additional franchising requirements, nor demand the payment of additional franchise fees, when a franchised cable operator provides non-cable services over its cable network and the provision of those services imposes no additional burden on public rights-of-way. As the comments describe, local governments' interests with respect to non-cable services are limited to managing the physical impact of rights-of-way usage and being compensated for the costs of that management.[1] This is particularly true for interstate communications services, such as interstate information services, over which neither states nor local franchising authorities have substantive jurisdiction. *See* Cox Broadband Access Comments at 41-43.

Cable operators are authorized by local governments to use public rights-of-way through their cable franchises, and they pay for that use through cable franchise fees. As the record in the broadband access proceeding demonstrates, the deployment of high-speed Internet access by cable operators imposes no new burden on public rights-of-way. Local governments thus incur no additional rights-of-way management costs when cable operators provide this new service over their cable networks. Accordingly, even if cable high-speed Internet access were not a cable service,[2] there would be no basis for local

[1] In rare cases, the states have delegated to local governments some of their substantive jurisdiction over intrastate telecommunications services.

[2] As you know, Cox believes that its cable modem services satisfy the statutory definitions of both "cable service" and "information service." *See* Cox's Broadband Access Comments and Broadband Access Reply Comments.

governments to demand that franchised cable operators secure an additional franchise or pay an additional franchise fee in order to provide this service. (I would also note that, because the deployment of high-speed Internet access imposes no additional rights-of-way costs, local governments' imposition of separate "franchise" or "rights-of-way" fees on this service would constitute an "Internet access tax" and a "discriminatory tax on electronic commerce" prohibited by the Internet Tax Freedom Act.[3])

As Cox observed in its comments in this proceeding, Congress has re-iterated its desire that interstate information services such as Internet access remain "unfettered by Federal or State regulation." 47 U.S.C. § 230(b)(2). Congress also specifically empowered the Commission to remove impediments to the deployment of advanced services in Section 706 of the Telecommunications Act of 1996. As the U. S. Supreme Court recently explained in the context of pole attachment rates, allowing cable operators to be charged higher fees when they provide high-speed Internet access, in addition to traditional video services, over their upgraded cable networks "would defeat Congress' general instruction to the FCC to 'encourage the deployment' of broadband Internet capability and, if necessary, 'to accelerate deployment of such capability by removing barriers to infrastructure investment.'"[4]

With respect to our discussion about the implications of a classification decision on broadband service providers' universal service obligations, Cox believes that the Commission has ancillary jurisdiction to address any distortions to the Commission's universal service programs that might arise from classifying cable Internet and other broadband services as Title I "information services." *See* Cox Broadband Access Comments at 43-44. Of course, Cox currently contributes a portion of its revenues from the provision of Title II telephone services to federal and state universal service funds. *See* Cox Broadband Access Reply Comments at 4.

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[3] *See* note following 47 U.S.C. § 151. In addition to the federal requirement that state and local governments manage public rights-of-way for telecommunications carriers in a nondiscriminatory fashion, 47 U.S.C. § 253(c), many state and local authorities have general rights-of-way statutes and ordinances that include a non-discrimination standard. The imposition of separate franchise or rights-of-way fees on cable Internet service would violate these prohibitions on discrimination, because other Internet access service providers are not subject to similar fees.

[4] *Nat'l Cable & Telecomm. Ass'n, Inc. v. Gulf Power Co.*, 534 U.S. __., slip op. at 10 (January 16, 2002) (quoting Pub. L. 104-104, VII, §§ 706(a), (b), and (c)(1), 110 Stat. 153, note following 47 U.S.C. § 157 (1994 ed., Supp. V)) .

I hope these materials will be useful to you. Please do not hesitate to contact me should you have further questions.

Sincerely yours,

Sandy Wilson

Alexandra M. Wilson

Enclosures